



Date: DEC 5 1996

Case No.: 95-BCA-2

Appeal of

FERRELL CONSTRUCTION OF TOPEKA, INC.

Contract No.: 99-1-4886-14-007-01

Before: Administrative Law Judges Miller and Levin

**ORDER DENYING APPELLANT'S MOTION
AND THE CONTRACTING OFFICER'S CROSS MOTION
FOR SUMMARY JUDGMENT RELATING TO REFRIGERANT LINE PIPING**

The motion of the Appellant for partial summary judgment and the Contracting Officer's cross motion for partial summary judgment relating to responsibility for defects in the refrigerant line piping at the Flint Hills Job Corps Center project in Manhattan, Kansas, are denied. At the instance of the Board on short notice, helpful oral argument and responses to inquiries were provided by counsel this date in a telephone conference before Judge Miller and Judge Levin. The Board has now determined that there are issues of material fact which preclude summary determination of the issues raised by the relevant portion of the final decision of Contracting Officer John Steenbergen dated March 7, 1995, and the related motions now pending. The Board concludes that a determination of the cause of the refrigerant line piping system failure must precede a determination of where responsibility for any defective design of the system properly lies. There is disagreement among the Appellant contractor, the equipment manufacturer, the Contracting Officer's two consultants, and the Contracting Officer as to what, if any, error or omission in the refrigerant line piping design could have caused the system to fail, and which, if any, design elements would have been properly included in shop drawings, and which, if any, elsewhere. These determinations cannot be made from analysis of the text of the specifications in issue and on the basis of the undisputed facts.

So ordered.

Edward Terhune Miller, Administrative Judge

Concur:

Stuart A. Levin, Administrative Judge